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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,686	12/27/2001	James L. Pokorney	38943.1.1.1	2581

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INTELLECTUAL PROPERTY GROUP  
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SUITE 4000  
MINNEAPOLIS, MN 55402

EXAMINER

THANH, LOAN H

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/034,686	Applicant(s) POKORNEY, JAMES L.	
	Examiner LoAn H. Thanh	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.  
 4a) Of the above claim(s) 5 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-4 and 6-15 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 5/6/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                              | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/06/04</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Amendment***

Priority has been updated as filed in amendment dated 05/06/04.

The IDS filed 05/10/04 has been considered. With respect to US references 3300941, 5226097, 3407834 which were included in the IDS filed 05/20/02, it is believed that these references were included with clerical error by applicant. Although they were considered it is believed that they are not related to this application. The references 3388941, 5226897, 3487834 filed 05/10/04 are believed to be the corrected US references that were intended and have now been considered.

The drawing objections have been withdrawn and the amended figure filed 05/06/04 has been approved.

The amended abstract filed 05/06/04 has been approved.

The specification objection has been withdrawn in view of the amendment filed 05/06/04.

The claim objection has been overcome in view of the amendment filed 05/06/04.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-4,6-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Merit Med systems, Inc ( 1990) or NAMIC Angiographic Systems (1988).

Merit Med systems, Inc ( 1990) or NAMIC Angiographic Systems (1988) disclose a syringe comprising a barrel with an exit orifice, a pair of opposing finger grips at the end of the barrel , each finger grip having an arcuate portion having a most proximal pressure point adjacent the barrel wherein said points define a plane substantially perpendicular to the barrel's axis and a plunger having a pressure surface. The devices of Merit Med systems, Inc (1990) or NAMIC Angiographic Systems ( 1988) are capable of performing the intended use.

Claims 1-4,6-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneyder ( U.S. Patent No. 794,190) or Osterhaus ( U.S. Patent No. 1,325,699). Schneyder or Osterhaus discloses a hand operated syringe comprising a barrel having an exit orifice, a pair of opposed finger each having an arcuate portion having a most proximal point which defines a plane substantially perpendicular to the barrel's axis and a plunger having a pressure surface which is spaced distally of said plane when fully inserted.

### ***Response to Arguments***

Applicant's arguments filed 05/06/04 have been fully considered but they are not persuasive. Applicant appears to be arguing more broad than claimed. "Distally" can be interpreted as far, distant , apart, or away. Applicant's claim language can still be

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interpreted broadly. Applicant has not specifically by structurally claimed the structure in order to overcome the prior art. The device for example with respect to Osterhaus clearly shows even if minimal that the plunger can be inserted further at which point the pressure surface is spaced distally of the plane. Further claim 4 only claims the "lies substantially in said plane".

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

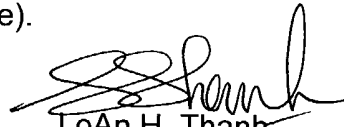
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Mon. - Fri. (First Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
LoAn H. Thanh  
Primary Examiner  
Art Unit 3763

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